## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA	) )
V.	) ) Case No. 3:18CR000025-002
MICHAEL PAUL MISELIS, Defendant	) ) )

## **Motion for Release Pending Appeal**

**COMES NOW**, the defendant, Michael Paul Miselis (hereinafter, 'Mr. Miselis' or 'defendant Miselis'), by counsel, and respectfully requests that the Court grant Mr. Miselis bail pending his appeal of the constitutionality of the federal Anti-Riot Act set forth in 18 U.S.C. §2101.

On October 10, 2018, Mr. Miselis and three other defendants were indicted and charged with conspiracy to commit an offense against the United States, to wit, travelling in interstate commerce with the intent to riot, 18 U.S.C. §2101, in violation of 18 U.S.C. §371 (Count One), and a substantive violation of 18 U.S.C. §2101 (Count Two).

On February 5, 2019, Mr. Miselis joined defendant Benjamin Daley in a motion to dismiss the indictment for the reason that the statute under which he was being prosecuted, the federal Riot-Act, 18 U.S.C. §2101, is unconstitutional. On April 22, 2019, the Court held a hearing on the motion and heard arguments of counsel. On May 3, 2019, Mr. Miselis entered a guilty plea pursuant to a plea agreement to Count One of the Indictment, and reserved the right to appeal the decision of the district court as the constitutionality of 18 U.S.C. §2101. On May 2, 2019, the Court issued a memorandum opinion setting forth its reasons for denying the motion.

Miselis is scheduled for sentencing on July 19, 2019. Miselis intends to file a notice of appeal immediately after being sentenced.

## Factual Background

Investigative Report (PSIR), Mr. Miselis is a life-long resident of the State of California, in the Stockton area. Until the instant case, Mr. Miselis has never been accused of committing a crime. At the time of his arrest, Mr. Miselis was a Ph.D. candidate in the Aerospace Engineering Program at U.C.L.A. Mr. Miselis was also employed with Northup Grumman as a Modeling and Simulation Analyst. Mr. Miselis intends to complete his Ph.D. program upon release from confinement. Mr. Miselis's mother, Judy Miselis, of Stockton, California, will be present at the sentencing hearing on July 19, 2019. Mr. Miselis's father, Dr. Kenneth Miselis, owns Heritage, Eye, Skin, and Laser Center in Stockton, California. Dr. and Mrs. Miselis intend to allow defendant Miselis to live with them after he is released from custody. Mr. Miselis is assured a fixed and stable residence, in addition to his continuing graduate studies.

## **Statutory Requirements**

Pursuant to the requirements of 18 U.S.C. §3143, the defendant maintains that under these circumstances he is not a flight risk and does not pose a danger to the safety of any person or the community if released pending an appellate decision. The anticipated appeal will be narrowly focused on the constitutionality of the statute under which Mr. Miselis stands convicted. The appeal is not for the purposes of delay and raises a substantial question of law that, if successful, will result in a reversal of the conviction. Importantly, Mr. Miselis need not show a likelihood of success on appeal, United States v. Garcia, 340 F.3d 1013, 1020, n. 5 (9<sup>th</sup> Cir. 2003), but only that the appeal presents an issue that could be decided either way. United States v. Steinhorn, 927 F.2d 195, 196 (4th Cir. 1991). It is noteworthy that the so-called "Chicago 7" case originating in 1968, to the cases arising from the 2016 presidential inauguration in Washington, D.C., to the prosecution of the RAM defendants in the Central District of California in 2019, it is difficult to identify a defendant who was convicted under 18 U.S.C. §2101, or whose conviction under that statute was affirmed on appellate review. Last month a district court in the Central District of California considered the identical constitutional issue that Mr. Miselis intends to raise on appeal and concluded, on June 3, 2019, that 18 U.S.C. §2101 is facially unconstitutionality. The California district court in these cases accordingly issued an Order dismissing the indictments against the

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Albeit only a few of these case dispositions were the result of challenges to the constitutionality of the statute.

several defendants prosecuted thereunder. (<u>United States v. Rundo</u>, Case No. 2:18-cr-00759 (C.D. Cal., June 3, 2019). That decision is now under appellate review and clearly constitutes a substantial question of law.

Respectfully Submitted,

MICHAEL PAUL MISELIS

S/\Warren (Gene) Cox
By: \_\_\_\_\_\_
Of Counsel

Warren "Gene" Cox, VA Bar #33712 genecox@coxfedlaw.com 308 Spotswood Avenue Elkton, VA 22827 (540) 742-5385 phone (540) 779-0609 fax

Ihereby certify that on this  $18^{th}$  day of July, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

S/Warren (Gene) Cox

Warren "Gene" Cox VA BAR #33712 genecox@coxfedlaw.com 308 W. Spotswood Ave. Elkton, VA 22827 (540) 742-5385 (phone) (540) 779-0609 (fax)